IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 3232 of 2005

Between:

V. Venkata Subramanyam, S/o. V. Venkateswarlu,
R/o. D.No. 26-1-1003, NGO's Colony, BV Nagar, AK Nagar Post,
Nellore District.

..... PETITIONER

AND

1 The District and Sessions Judge, Nellore, Nellore District.
2 The Registrar (Administration), High Court of Andhra Pradesh,

Hyderabad.
3 G. Varalakshmi, Record Assistant, Prl. District Munsif's Court, Nellore.
4 K. Bhaskara Reddy, S/o. Rajagopal Reddy,
IV Addl. Judl. Magistrate, First Class, Nellore.
5 T. Venkata Ramana, Attender, Sub Court, Nellore.
6 J. Dev Singh, Attender Addl. Judicial,
Magistrate I Class, Kavali, Nellore District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents Nos. 1 and 2 in not appointing the petitioner as Record Assistant/Attender in pursuance of judgment dated

20.7.2001 passed by this Honourable Court in W.P.No.18786 of 1995 as illegal, arbitrary and violation of Article 14, 16 and 21 of the Constitution of India and consequently to direct the Respondents to appoint the petitioner as Record Assistant/Attender forthwith in pursuance to the notification dt. 16-2-1995 notified by the 1st Respondent in his Dis.No. 784/1995 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.S.LAKSHMINARAYANA REDDY

Counsel for the Respondents.: . Mr.C.V.Nagarjuna Reddy, SC for High Court.

The Court at the stage of admission made the following :

Oral Order: (per the Hon'ble the Chief Justice)

The petitioner had applied for the post of Record Assistant / Attender as per notification dated 16/2/1995 issued by the District Judge, Nellore. In the said notification, one post of Record Assistant was notified for local OC candidates and

out of the 5 attender posts notified, 3 posts were reserved for OC local, one post was reserved for Scheduled Tribe and one post was reserved for Backward local. After the appointments were made, the petitioner preferred W.P.No.18786 of 1995 questioning the appointment of respondents 3 to 6 on the ground that they are non-local candidates and therefore they could not have been appointed in the posts reserved for local candidates. The said writ petition came up before a Division Bench of this Court. During the hearing of the writ petition, there was no unanimity in the conclusion reached by the Division Bench; one of the learned Judges comprising the Division Bench (S.R.Nayak,J) dismissed the writ petition and the other learned Judge (S.Ananda Reddy,J) quashed the appointments of respondents 3 to 6 as not in accordance with law. Accordingly, the matter was referred to a 3rd judge. Justice S.B.Sinha, the Honourable the Chief Justice, as he then was, the third Judge, concurred with the opinion of Justice S.Ananda Reddy that appointments of respondents 3 to 6 were not in consonance with law and accordingly disposed of the writ petition with directions to the District Judge to conduct an enquiry as regards the allegations made by the petitioner and record a finding whether respondents 3 to 6 herein fulfil the criteria of local candidature in terms of para 7 of the Presidential Order upon giving an opportunity of hearing to the parties to adduce evidence in that regard. In the event of recording a finding that respondents 3 to 6 are not local candidates, the District Judge was directed to pass appropriate consequential orders. Only respondent No.6 approached the Supreme Court by filing SLP Civil No.17252/01 against the judgment dated 25.6.2001 in W.P.No.18786 of 1995. The Supreme Court has called for the report of the District Judge and as per the report of the District Judge, since the respondents were not entitled to be selected to the posts reserved for local candidates, dismissed the S.L.P. But, taking into consideration the fact that the 6th respondent had served the department for more than 9 years, it was directed that if any vacancy falls vacant in future, the department may accommodate Respondent No.6, if the same is legally permissible.

Now the petitioner herein who had filed W.P.No.18786 of 1995 submits that since his writ petition was allowed, straight away a direction has to be issued to the District Judge to appoint him to the post of Record Assistant/Attender. Allowing such a relief, according to the petitioner, would be in implementation of the orders of this Court in W.P.No.18786 of 1995. It is his submission that since the writ petition filed by him was allowed by one of the Honourable Judges comprised in the Division

Bench and the third Judge has concurred with the finding that the appointments of respondents 3 to 6 are bad in law, he is entitled to be appointed straight away as Record Assistant/Attender.

We have gone through the record. We find that the submission made is totally mis-conceived. As a matter of fact, when there is a difference of opinion amongst the Judges comprised in Division Bench, on reference being made to a third judge, the writ petition was disposed of with certain directions issued to the District Judge to make an enquiry and pass consequential orders. The petitioner has not alleged in the writ petition that except as regards respondent No.6, any enquiry was made against respondents 3 to 5 and as to what consequential orders were passed. Only in the event of any vacancies being available, the District Judge has to follow procedure in accordance with law for filling such vacancies. No right was vested in the petitioner for being appointed as Record Assistant straight away. It is not on record whether the petitioner was duly found fit for regular appointment to the post in question. At the most, the petitioner could have sought for the implementation of the judgment of this Court in WP No.18786 of 1995. It was not his case that the directions given by this Court in the earlier writ petition were not being implemented by making enquiry by the District Judge. Since the petitioner has no right to seek appointment to the post of Record Assistant/Attender straight away merely on the ground that the writ petition filed by him was allowed, the entire relief claimed in this writ petition is mis-conceived. It is therefore dismissed. It is needless to add that as on today if the petitioner is eligible to be appointed to the post in question as and when posts are notified, he would be at liberty to apply along with other candidates and his case can be duly considered in accordance with law along with other candidates.

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DEVINDER GUPTA, CJ

Dated 28..02..2005

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B.SESHASAYANA REDDY,J

msv

To

1. The District and Sessions Judge, Nellore, Nellore District.
2. The Registrar (Administration), High Court of Andhra Pradesh,

Hyderabad.
3. 2 CD copies.